IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 12TH FEBRUARY 2007 / 23RD MAGHA 1928

WP(C).No. 3942 of 2005(T)

PETITIONER:

DR.P.N.MOHANAN,
SENIOR MEDICAL OFFICER,
GOVERNMENT AYURVEDA DISPENSARY,
PANNIKKOTTOOR, KOZHIKODE DISTRICT.

BY ADV. SRI.P.R.RAMACHANDRA MENON
SRI.M.K.THANKAPPAN

RESPONDENTS:

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1. STATE OF KERALA, REP. BY THE
PRINCIPAL SECRETARY, VIGILANCE (C) DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE SECRETARY TO THE GOVERNMENT OF
KERALA, HEALTH & FAMILY WELFARE DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

3. THE DIRECTOR, INDIAN SYSTEMS OF
MEDICINE, THIRUVANANTHAPURAM.

4. DR.RAMABHADRAN,
JOINT DIRECTOR, INDIAN SYSTEMS OF MEDICINE,
THIRUVANANTHAPURAM.

R4 BY ADV. SRI.R.RAMADAS
R1 TO R3 BY SMT. MEERA, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1-TRUE COPY OF THE MEMO OF CHARGES DATED 16.8.2001 WITH STATEMENT OF ALLEGATIONS.

EXT.P2-TRUE COPY OF THE EXPLANATION DATED 24.10.01 SUBMITTED BY THE PETITIONERS

EXT.P3-TRUE COPY OF THE SHOW CAUSE NOTICE DATED 1.7.03 ISSUED BY THE FIRST RESPONDENT AS TO THE PROPOSED PUNISHMENT

EXT.P4-TRUE COPY OF THE REPLY DATED 5.10.2003 SUBMITTED BY THE PETITIONERS

EXT.P5-TRUE COPY OF THE ADVICE MEO DATED 5.11.2004 ISSUED BY THE PSC TO THE FIRST RESPONDENTS

EXT.P6-TRUE COPY OF ORDER DATED 1.1.2005 ISSUED BY THE FIRST RESPONDENT IMPOSING THE PUNISHMENT ON THE PETITIONER.

EXT.P7-TRUE COPY OF THE ORDER DATED 23.8.04 ISSUED BY R2

EXT.P8-TRUE COPY OF GRADATION LIST OF SENIOR MEDICAL OFFICERS OF INDIAN SYSTEMS OF MEDICINE AS ON 1.1.05

// TRUE COPY //

T.R. Ramachandran Nair, J.

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W.P.(C).NO.3942 OF 2005-T

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Dated this the 12th day of February, 2007

JUDGMENT

This writ petition is filed seeking to quash Ext.P6 order passed by the first respondent. The short facts leading to the case are the following:

2. The petitioner is working as a Senior Medical Officer in a Government Ayurveda Hospital. According to him, while he was working in the Government Ayurveda Hospital at Kallar, he was served with Ext.P1 memo containing different charges . Ext.P2 is the explanation submitted by him denying the charges levelled against him. As the explanations were found not satisfactory, the Government decided to refer the charges to the Vigilance Tribunal for a detailed enquiry. Ultimately, the Vigilance Tribunal held that the charges stood proved and accordingly it recommended to impose a penalty of reduction to the lower post/grade for a period of three years. Ext.P3 is the show cause memo proposing to impose the punishment, issued by the Government. The petitioner submitted Ext.P4 reply. Thereafter, the advice of the Public Service Commission was sought and their communication addressed to the Government is produced as

Ext.P5. In Ext.P5, the Commission, after examining the case, informed their views that imposing the penalty of reduction to lower post for the remaining period of service will meet the ends of justice. Ext.P6 is the order passed by the Government in Vigilance (C) Department imposing the punishment of reduction to the lower post/grade for the remaining period of service. According to the petitioner, the disciplinary action was taken against him because of certain circumstances explained by him in paragraph 3 of the writ petition, and that it was taken at the instance of the 4th respondent, and hence is vitiated by malafides.

3. The petitioner has got a further contention that he was due for promotion as Chief Medical Officer and one of his juniors was promoted on 23.8.2004 as per Ext.P7 order. According to him, it results in imposition of another punishment by way of denial of eligible promotion and amounts to double jeopardy as well.

4. The respondents have filed a detailed counter affidavit traversing the contentions of the petitioner and seeking to sustain all actions leading to Ext.P6. It is contended that the Government provisionally accepted the findings and recommendations of the Vigilance Tribunal after a detailed examination of the report. The petitioner has failed to put forth any valid arguments to substantiate his contentions pursuant to the show cause notice issued and hence the Government confirmed the provisional decision to accept the findings and the recommendation of the Vigilance Tribunal and

therefore the case was referred to the Public Service Commission for advice. The allegation of malafides is denied in the counter affidavit. It is also contended that the petitioner being a Medical Officer, was bound to maintain high standards of professional qualities and hence the punishment awarded is justified. As regards the complaint that his promotion has been denied, it has been clarified that as the disciplinary proceedings were pending, it was not possible for the department to consider his name for promotion to the higher post.

5. I heard the counsel for the petitioner and the Government Pleader. The counsel for the petitioner vehemently argued that Ext.P6 order is vitiated by several illegalities. The counsel submitted that the charges were not proved actually and if at all anything has been proved, that is not sufficient to warrant the punishment now awarded. It was also contended that the Government has not applied its mind to the entire aspects before awarding the punishment. The counsel further contended that if the petitioner was granted promotion at the right time, he would have continued as Chief Medical Officer and as his juniors have been promoted, the denial of promotion amounts to a further punishment.

6. A reading of Exts.P1, P3 and P6 will show that the disciplinary proceedings were initiated after an investigation conducted by the Vigilance and Anti Corruption Bureau into the allegations against the petitioner. They include demand for bribe. Thereafter, specific charges were framed against

him. The Vigilance Tribunal conducted a detailed enquiry in accordance with the principles of natural justice. The Government, after a detailed examination of the report, accepted the findings and recommendations of the Vigilance Tribunal. Exts.P3 and P6 will show that the Government has applied its mind to the charges levelled against the petitioner, findings of the Vigilance Tribunal and its recommendations. The explanation offered by the petitioner were also considered by the Government and it has been found that he could not put forth any valid arguments against the punishment proposed. The Government also sought the advice of the Kerala Public Service Commission and only after getting the advice and after accepting the same, the Government decided to impose the penalty of reduction to the lower post/grade for the remaining period of service as advised by the Commission. The above aspects will show that the petitioner could not substantiate any of the allegations regarding violation of the principles of natural justice during the enquiry. He could not successfully challenge the findings of the Vigilance Tribunal. The finding of guit by the Tribunal has been duly and correctly accepted by the Government. I find that Exts.P3 and P6 do not suffer from any of the infirmities alleged by the petitioner. Hence, the punishment has been imposed based on the charges proved. The same cannot be said to be grossly disproportionate also. Therefore, the challenge against Exts.P3 and P6 fails.

7. Regarding the argument that by denying promotion, a further

punishment has been imposed on him which amounts to double jeopardy, the same is liable to be rejected. The disciplinary action against the petitioner was pending at the time when Ext.P7 order was passed. The petitioner has not chosen to challenge Ext.P7 at that time. Further, since the disciplinary action was pending, the Government was right in not considering him for promotion and the said reason is a sound and valid one and is in accordance with the legal principles. Therefore, the department was right in not considering him for promotion to the next higher post at that time. The position is well settled by various decisions of this Court.

8. The allegations regarding malafides have also not been substantiated. Further the disciplinary action was completed after a due enquiry and also in accordance with the principles of natural justice.

In view of the above, the writ petition fails and the same is dismissed without any order as to cost.

(T.R. Ramachandran Nair, Judge.)

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